

No. 94-23

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

CITY OF EDMONDS,

v.

Petitioner,

WASHINGTON STATE BUILDING CODE COUNCIL, *et al.*,
and UNITED STATES OF AMERICA,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

BRIEF AMICUS CURIAE OF THE AMERICAN
TRAIN DISPATCHERS DIVISION OF THE
BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
THE BROTHERHOOD OF RAILROAD SIGNALMEN,
AND THE UNITED TRANSPORTATION UNION
IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS

The American Train Dispatchers Division of the Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Engineers, the Brotherhood of Railroad Signalmen, and the United Transportation Union are railway labor organizations having a direct interest in the assurance of railroad safety. To assure safe operating conditions for their members, the Brotherhoods have—since the beginning—fostered abstinence from any alcohol

or addictive drugs on the job. Through collective bargaining with the railroad industry, the railway labor organizations have actively fostered intervention and treatment whenever a railroad employee becomes afflicted with alcoholism or drug addiction. As part of such intervention and treatment, addicted employees are afforded an opportunity to develop behavior necessary to stay clean and sober. Once an addicted individual has changed behavior and developed behavior likely to result in long-term sobriety, employment is resumed. Utilization of self-help programs such as Oxford House often provide the kind of support necessary for an alcoholic or drug addicted employee to develop long-term abstinence from the use of any alcohol or drugs.

INTRODUCTION

The location of Oxford House-Edmonds is similar in the location, type and size to the more than 500 other Oxford Houses throughout the country. While the first Oxford House was started in 1975 in Silver Spring, Maryland, the number of houses has rapidly increased since 1989 as a result of enactment of § 2036 of Pub. L. 100-690, the Anti-Drug Abuse Act of 1988.¹ Each of the Oxford Houses is an equal member of Oxford House, Inc., the non-profit, umbrella organization for the national network of individual houses. The umbrella organization provides a charter to groups of six or more recovering individuals who rent a house together and follow the standardized system of operations developed by the organization. Each charter has three conditions: (1) the group must be democratically self-run, (2) the group must be financially self-supported, and (3) the group must immediately expel any resident who returns to using alcohol or drugs. These three conditions form the basis of the conditions for the promotion of recovery homes under

¹ See Department of Health and Human Services Publication No. (SMA) 93-1678: *Self-Run, Self-Supported Houses for More Effective Recovery from Alcohol and Drug Addiction*, 1993.

§ 2036 of Pub. L. 100-690, the Anti-Drug Abuse Act of 1988. 42 U.S.C. 300x-25.

Shortly after enactment of the recovery house provision in Pub. L. 100-690, the magazine of the professional association of employee assistance program (EAP) directors ran an article entitled: After Treatment, Oxford House Answers the Question of "What Next?"² "EAPs have struggled for years with the "revolving door syndrome," it stated, "It may be that just as the Oxford House concept of communal living is a link in the recovery chain, it can play a major part in EAP referral and follow up."³

Railway labor organizations have first hand knowledge of the value of an effective peer program to provide a continuum of support for the recovering alcoholic and drug addict. Many of the labor organizations were started in the last century as temperance organizations. The industry itself had Rule G which prohibited the use of any alcohol or drugs on the job or before coming to work. In 1976, the Federal Railroad Administration conducted a detailed study of alcohol and drug abuse programs in the railroad industry.⁴ That report recommended close cooperation between railroad management and labor organizations for prevention, intervention and treatment. The Federal Railroad Administration also contracted a cooperative labor and management study of the industry between 1977 and 1979 to determine the extent of alcohol and drug problems among railway employees.⁵ As an

² EAPA Exchange, November 1989.

³ *Id.* p. 27.

⁴ Report No. FRA/OPPD-OR&D 76-283, A Survey of Alcohol and Drug Abuse Programs in the Railroad Industry.

⁵ *Problem Drinking Among Railroad Workers: Extent, Impact and Solutions*, University Research Corporation, Washington, 1979. Known as the REAP Study the survey involved 234,000 railroad

outgrowth of that report, railway labor organizations took a number of steps to deal with the problem including collectively bargained health insurance coverage for treatment and a change in practices for dealing with the use of alcohol and drugs by employees. Today, Operation RedBlock is a peer prevention, intervention and treatment program whereby members of labor organizations work with each other to prevent alcohol or drug use on the job or before coming to work and help the individual with an addiction to get treatment.⁶ In the Operation RedBlock program volunteers also assist the recovering employee after treatment to help prevent relapse.

Recovery from alcoholism and drug addiction is a process to develop life-long behavior change necessary to avoid drinking any alcohol or using any addictive drug. Self-help programs such as Alcoholics Anonymous and Oxford House are valuable tools to help the recovering alcoholic and drug addict stay clean and sober.

Within the railroad industry the decline in active alcoholism and drug abuse as a result of Operation RedBlock and related programs has been so significant that random testing of employees as required by the Federal Railroad Administration has been reduced from a requirement of annually testing 50% of the workforce to a requirement of annually testing 25% of the workforce. The lower testing requirement is the result of finding less than 1% positives from the preceding two-year testing period.⁷

employees and found 25% were non-drinkers; 56% drink without problems and 19% were problem drinkers.

⁶ Bacharach, Bamberger and Sonnenstuhl, *Member Assistance Programs in the Workplace: The Role of Labor in the Prevention and Treatment of Substance Abuse*, ILR Press, Ithica, New York, 1994.

⁷ 49 CFR Part 219; 59 FR 67641, December 30, 1994. Note that the positive test rate for a 50 percent random sample of railroad employees was but .79 in 1992 and .72 in 1993.

The railway labor organizations know that treatment for alcoholism and drug addiction works if there is an organized program of support for an alcohol and drug-free workplace and an opportunity for the afflicted addicted employee to learn the behavior necessary for recovery. The Oxford House program which permits groups of six or more recovering individuals to live together in a rented house following a standardized system of democratic operations, mutual support and strict adherence to staying clean and sober, is an important resource for providing recovering persons the opportunity to stay clean and sober forever.

Therefore, it is important that local jurisdictions make a reasonable accommodation in their zoning laws to permit Oxford Houses to be rented in good neighborhoods. Moreover, the extent of the continuing problem of alcoholism and drug abuse in the population at large necessitates the mass replication of recovery houses which can only take place if handicapped individuals are able to rent and establish such houses without protracted adjudication and litigation.

ARGUMENT

THE FEDERAL HOUSING AMENDMENTS ACT OF 1988 PERMITS HANDICAPPED INDIVIDUALS RECOVERING FROM ALCOHOLISM AND DRUG ADDICTION TO ENJOY THE SAME SPECIAL ZONING STATUS ACCORDED FAMILIES UNDER THE CONSTITUTION.

Treatment for alcoholism and drug addiction involves much more than simple detoxification. The best description of treatment of the alcoholic and drug addict continues to be Vernon Johnson's four steps—(1) intervention; (2) detoxification; (3) education, and (4) long term behavior change.⁸ The maintenance of "long-term behavior change" is the most difficult part of successful treatment for the alcoholic and drug addict. In 1988, Dr. Arnold M. Ludwig, a professor of psychiatry at the University of Kentucky, reported that eighteen month follow-up studies of alcoholics after treatment showed that about one-half of the alcoholics managed to stay dry for a minimum of three months; about one-third for six months; about one-sixth for twelve months; and less than one-tenth for the entire eighteen month period.⁹ Dr. George E. Vaillant, in a long-term longitudinal study reported a similarly high relapse rate of 80% for alcoholics two years following treatment.¹⁰

The concept underlying self-run, self-supported recovery houses is the same as the one underlying Alcoholics Anonymous and Narcotics Anonymous—addicted individuals can help themselves by helping each other abstain from alcohol

⁸ Vernon E. Johnson, *I'll Quit Tomorrow*, Harper and Row, San Francisco, 1980. (See particularly chapters 5 and 7 and Appendix A.)

⁹ Arnold M. Ludwig, M.D., *Understanding the Alcoholics Mind*, Oxford University Press, New York 1988, p. 51.

¹⁰ George E. Vaillant, M.D. *The Natural History of Alcoholism*, Harvard University Press, Cambridge, Massachusetts, 1983.

and drug use one day at a time for a long enough time to permit a new set of values to be substituted for the values of a lifestyle in which alcohol and drugs were used.¹¹ Vaillant enumerates the following four components of treatment which can provide the recovering alcoholic with the means for changing behavior: (1) offering the patient a non-chemical substitute dependency for alcohol, (2) reminding him ritually that even one drink can lead to pain and relapse, (3) repairing the social and medical damage that he has experienced, and (4) restoring self-esteem.¹² He goes on to point out that "self-help groups, of which Alcoholics Anonymous is one model, offer the simplest way of providing the recovering alcoholic with all four components referred to above."¹³ Many recovering alcoholics need both the time and support of congregate living. Oxford Houses provide that time and support in a way that foster the four components of successful treatment set forth by Dr. Vaillant. The democratic self-rule of a sufficiently sized group allows the individual resident to relearn or learn responsible behavior and values without the use of alcohol. The open-ended time frame in which an individual can live in a house takes into account individual differences in mastering new behavior to assure total abstinence. For railroad employees at work, programs such as Operation RedBlock supplement the support that is provided in an Oxford House and at self-help meetings such as Alcoholics Anonymous. This comprehensive approach prevents relapse and makes treatment effective.

The location of an Oxford House in a good neighborhood further enhances the prospects of successful recovery.

¹¹ U.S. Department of Health and Human Services, Technical Assistance Publication Series Number 5, *Self-Run, Self-Supported Houses for More Effective Recovery from Alcohol and Drug Addiction*. DHHS Publication No. (SMA) 93-1678, p. 7.

¹² Vaillant, op. cit. 300.

¹³ *Id.* 301.

This is why an appropriate application of The Federal Fair Housing Admendments Act of 1988 ("FHAA") is important.

FHAA broadly protects persons with disabilities against discrimination in all forms of housing. 42 U.S.C. § 3602(h). When FHAA was enacted, Congress recognized that sometimes rules and regulations might have to be altered in order for persons with disabilities to have equal access to and use of housing. Specifically, Congress included in the definition of discrimination "a refusal to make reasonable accommodation in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(3)(B).

Handicapped recovering alcoholics and drug addicts are in a vulnerable position in two ways: (1) their past addictive behavior has often left them with family, employment, financial or other problems, and (2) the challenge of learning new behavior free of alcohol or drug use. Where they used to live is sometimes not an option and if it is it may make it more difficult to change behavior because of old habits, friends and family stress. The length of time and individual needs to live with others in the same situation varies with each individual situation. However, the average length of stay in an Oxford House is thirteen months.¹⁴

The question in this case is whether the exemption contained in § 3607(b)(1) of the FHAA permits the City of Edmonds, Washington not to accommodate a group of unrelated handicapped individuals who because of their handicap (recovery from alcoholism and drug addict) reside together in an Oxford House—a self-run, self-supported recovery house that meets the requirements

¹⁴ The Seattle Times, April 4, 1994, *Oxford House: Sober To Stay*.

or the recovery house provision of the Anti-Drug Abuse Act of 1988. 42 U.S.C. 300x-25.

The City of Edmonds' Community Development Code (ECDC) has a definition of "family" which includes "a group of five or fewer persons who are not related. . . ." ECDC § 21.30.010. Clearly, absent the FHAA, the eight to twelve residents of Oxford House-Edmonds could not lawfully reside in a dwelling zoned for single family residence. *Village of Belle Terre v. Boraas*, 416 U.S. 1, 94 S. Ct. 1536 (1974). However, unlike the unrelated individuals in the *Belle Terre Case*, the residents of Oxford House-Edmonds are all recovering alcoholics and drug addicts and fall within the protected class of "handicap" defined in § 802 of the FHAA. 42 U.S.C. 3602(h).

This Court in *Village of Euclid, Ohio v. Amber Realty Co.*, 272 U.S. 365 (1926), considered local single family zoning for the first time in the nation's history and found that it was constitutional. Mr. Justice Southerland, in writing the opinion for the court, noted that:

Such regulations are sustained, under the complex conditions of our day, for reasons analogous to those which justify traffic regulations, which, before the advent of automobiles and rapid transit railways, would have been condemned as fatally arbitrary and unreasonable. And in this there is no inconsistency, for, while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming with the field of their operation. In a changing world it is impossible that it should be otherwise. *Id.* at 387.

It is within this context of a "changing world" that Congress passed and President Reagan signed the FHAA. Changes in legislation affecting the treatment of the handicapped, including alcoholics and drug addicts reflects changing knowledge about the nature of the handicap and changes in society. The status provided handicapped in-

dividuals with respect to housing today is considerably different from just thirty or forty years ago. In the nineteen-fifties, the handicapped—whether mentally impaired, alcoholics or drug addicts—were segregated and incarcerated as a matter of public policy. Beginning with the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, Pub. L. No. 88-164, 77 Stat. 282 (1963)¹⁵ the nation changed its policy with respect to treatment of the handicapped. More recently, in § 1925 of the ADAMHA Reorganization Act of 1992, Pub. L. 102-321, 42 U.S.C. 300x-25, Congress changed the number of recovering individuals required to live in a self-run, self-supported recovery home to be eligible for a start-up loan from four (4) to six (6) presumably because the larger number of individuals made such a recovery home function better.

The Ninth Circuit Court correctly found that the City of Edmonds could not exclude groups of handicapped individuals living in an Oxford House by limiting the number of unrelated individuals who could live in an area zoned for single family dwellings.

The central issue in the case revolves around whether the following exemption in the Act is interpreted broadly or narrowly:

Nothing in this subchapter limits the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. 42 U.S.C. § 3607 (b)(1).

The Court first looks to the plain meaning of the provision and determines that it can be either interpreted broadly as the City of Edmonds argues, or narrowly, as the respondents argue. It then looks to the legislative history of which there is only one Committee Report—

¹⁵ Repealed by the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 902(e) (2) (B), 95 Stat. 537, 560.

the Judiciary Committee of the House of Representatives—H.R. Rep. No. 711, 100th Cong., 2d Sess. 24 (1988). That report is crystal clear.

These provisions are not intended to limit the applicability of any reasonable local, State, or Federal restrictions on the maximum number of occupants permitted to occupy a dwelling unit. *A number of jurisdictions limit the number of occupants per unit based on a minimum number of square feet in the unit or the sleeping areas of the unit.* Reasonable limitations by governments would be allowed to continue, *as long as they were applied to all occupants, and did not operate to discriminate on the basis of race, color, religion, sex, national origin, handicap or familial status.* (emphasis added)

Unlike some legislation which generates reports from several legislative committees as well as a Committee on Conference between the House and the Senate, this legislation has only the report by the House Judiciary Committee. It provides a reasonable explanation of what is intended by the exemption for restrictions on the maximum number of occupants; i.e., number of occupants per unit “based on a minimum number of square feet in the unit or the sleeping areas of the unit.” Not only does the example in the House Report show how to apply the limitation to the maximum number of individuals permitted to occupy a dwelling, but the report language specifies that limitations on the maximum number of occupants would be allowed “as long as they were applied to all occupants and did not operate to discriminate on the basis of race, color, religion, sex, national origin, handicap or familial status.”

The City of Edmonds in its Petitioner’s brief argues that the decisions of the Supreme Court afford the family special status under the Constitution. We agree. However, the accommodation of a group of recovering individuals living together in order to stay clean and sober

does not adversely impact a neighborhood. Neither does it open the door to group homes for those who are not handicapped. A local jurisdiction can still limit the number of unrelated "non-handicapped" individuals who can occupy a dwelling in an area zoned for single family dwellings. *Village of Belle Terre v. Borass*, 416 U.S. 1 (1974).

Petitioner City of Edmonds describes the underlying reason that areas zoned for single family dwellings provide the environment to enhance recovery and mutual support when it quotes Justice Douglas to describe such zones:

A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. . . . The police power is not confined to the elimination of filth, stench and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people. *Belle Terre*, 416 U.S. at 9.

What group of individuals more need to live in a zone "where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people" than those handicapped, like the ten to twelve men in Oxford House-Edmonds, who want to change their lifestyles by living together in an alcohol and drug-free environment?

CONCLUSION

Alcohol abuse and dependence (i.e. alcoholism) are serious problems that affect about 10 percent of adult Americans.¹⁶ While the railway labor organizations have successfully worked with railroad management to address the problem within the industry, the problem throughout society remains large. Establishment of Oxford Houses throughout the country in safe single family neighborhoods can provide a valuable resource for successful recovery from alcoholism and drug addiction. For the reasons, set forth above, *amici curiae* urge this Court to affirm the decision of the Court of Appeals below.

Respectfully submitted,

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¹⁶ *Seventh Special Report to the U.S. Congress on Alcohol and Health From the Secretary of Health and Human Services*, January, 1990, p. xxi.